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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,024	04/12/2004	Mitsuhiro Wada	02309/100H368-US1	3544
7278	7590	05/09/2007		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 05/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/823,024	<b>Applicant(s)</b> WADA, MITSUHIRO	
	<b>Examiner</b> Melanie J. Hand	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### *Response to Arguments*

Applicant's arguments, see Remarks, filed April 23, 2007, with respect to the rejection(s) of claim(s) 4 and 8-10 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### *Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al (U.S. Patent No. 6,039,716) in view of Wennerblom et al (U.S. Patent No. 3,799,165).

With respect to **claim 8**: Jessup teaches a sanitary tampon comprising: an absorber 10 including an absorbent layer 14 made of an absorbent fibrous material (cotton or rayon) and a hydrophobic (because it is made of polyolefins) liquid-permeable (because said cover is a porous substrate) layer 16 covering both surfaces of the absorbent layer 14, said absorbent layer 14 having a plurality of small open recesses dispersed in both the surfaces of said

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absorbent layer 14 as a result of bonding the cover 16 to the absorbent layer 14 by pressure and extending toward an inner area of said absorbent layer 14 (Col. 5, lines 28-31), wherein the small open recesses are formed by embossing the absorbent layer prior to compression so that a fiber density of the absorbent layer is increased in a vicinity of the small open recesses; said absorber 10 is rolled into softwind 22 and folded along three fold lines 28,30 and 32. Jessup teaches these fold lines do not extend in a longitudinal direction of said absorber 10. Lines 28,30,32 do have three clefts (cleft 40 and the two other clefts seen in Fig. 6) defined between adjacent folds and then compressed over a substantially entire length into a column shape (Figs. 7,8). The three clefts do not open on a column surface in a direction parallel to the longitudinal direction, rather they open in a transverse direction which is perpendicular to said longitudinal direction.

Wennerblom teaches a tampon having an absorber 6 being folded along three fold lines extending in a longitudinal direction of said absorber 6 to have three clefts defined between adjacent folds ('165, Fig. 7) and then compressed over a substantially entire length into a column shape, wherein the three clefts open on a column surface in a direction parallel to said longitudinal direction. Wennerblom teaches that this configuration produces sufficient adhesion in the interfacial layer to allow the absorber 6 to retain its folded shape ('156, Col. 3, lines 55-60), therefore it would be obvious to one of ordinary skill in the art to modify the article of Jessup so as to have three clefts that open in a direction parallel to the longitudinal direction of the absorber as taught by Wennerblom so as to ensure that the absorber retains its folded shape.

With respect to **claim 4**: Jessup teaches that the absorbent layer 14 is formed of a fibrous web comprising rayon ('716, Col. 3, lines 63-65), and the hydrophobic liquid-permeable layer 16 is formed of a spunbonded nonwoven fabric ('716, Col. 5, lines 38-40). Wennerblom does nto

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teach a particular material for the protective layer. ('165, Col. 2, lines 52-56) The combined teaching of Jessup and Wennerblom does not explicitly teach a permeable layer comprising polyethylene terephthalate. However, Jessup teaches a polypropylene web, which is substantially similar in its permeability properties to PET. Since polypropylene and PET seek to solve a similar problem in the art (i.e. providing permeability to a substrate) and accomplish an identical result of providing such liquid permeability, it would be obvious to modify the article of the combined teaching of Jessup and Wennerblom so as to have a permeable layer comprising PET with a reasonable expectation of success.

With respect to **claim 9**: The absorber taught by Jessup is folded into a column shape, and has a general "M-shape", however said absorber 10 does not have a generally M-shaped cross-section. Wennerblom teaches an absorber 6 that is folded into a column shape and has a generally M-shaped cross-section. The motivation to combine the articles of Jessup and Wennerblom has been stated *supra* with respect to claim 8.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al (U.S. Patent No. 6,039,716) in view of Wennerblom et al ('165) as applied to claims 4, 8 and 9 above, and further in view of Osborn, III et al (U.S. Patent No. 5,885,265).

With respect to **claim 10**: The combined teaching of Jessup and Wennerblom does not teach an aperture diameter or density prior to compression. Osborn teaches an interlabial absorbent article 20 with a cylindrical shape ('265, Col. 5, lines 26-28) having a topsheet 28 and backsheet 30 wherein topsheet 28 contains a plurality of apertures 50. Osborn teaches an aperture density of between 9-400/in<sup>2</sup> and an open area percentage of 30-40%. ('265, Col. 36-39, 46-48) Taking

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these teachings into account, the range for aperture diameter is 0.54-3.5 mm. Osborn is silent regarding the specific motivation for teaching aperture densities in said range, however Osborn teaches that article 20 is water-dispersable and flushable, and a higher density of apertures would hasten absorption and breakdown of the article in water and thus have a similar effect in terms of absorbing exudates more rapidly and transferring said exudates to absorbent core 32, therefore it would be obvious to one of ordinary skill in the art to modify the liquid-permeable apertured film cover taught by the combined teaching of Jessup and Wennerblom so as to have an aperture diameter and density in the range taught by Osborn, which overlaps the relevant ranges set forth in claim 10.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

May 2, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

